FILED

NOV 03 2009

DEPARTMENT OF REAL ESTATE

By

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Bar Order Against:	)	
	)	NO. H-2342 FR
DAVID MARSHALL CRISP,	)	
	)	OAH NO. 2009030774
	)	
Respondent.	)	
	)	

DECISION

The Proposed Decision dated September 25, 2009, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on NOV 23 2009.

IT IS SO ORDERED 11-3-09.

JEFF DAVI
Real Estate Commissioner

BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Bar Order Against:	Case No. H-2342 FR
DAVID MARSHALL CRISP,	OAH No. 2009030774
Respondent.	

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on August 11, 2009, in Sacramento, California.

Michael B. Rich, Counsel, represented complainant the Real Estate Commissioner of the Department of Real Estate (department).

There was no appearance by or on behalf of David Marshall Crisp (respondent).

Evidence was received, the record was closed, and the matter was submitted on August 11, 2009. On August 31, 2009, the Office of Administrative Hearings issued an Order Reopening Record Re: Authority to Issue Bar Order. On September 1, 2009, complainant filed points and authorities in support of complainant's authority to issue a Bar Order pursuant to Business and Professions Code section 10087. Respondent did not submit a written brief in his behalf. The record was closed, and the matter was submitted on September 16, 2009.

ISSUE

The issue for determination in this matter is whether, under Business and Professions Code section 10087, which was enacted by the legislature on January 1, 2009, the department can issue an Order of Debarment against respondent, a real estate salesperson whose license was revoked on October 15, 2008.

FACTUAL FINDINGS

Procedural History

1. On October 15, 2008, the department adopted the proposed decision of an Administrative Law Judge, and revoked respondent's real estate salesperson license and licensing rights, based on his false and misleading representations of material facts to six (6) lenders, between 2005 and 2006, which induced said lenders to fund 23 mortgage purchases and refinance loans totaling over $10,800,000.00.

2. On January 15, 2009, complainant filed a Notice of Intention to Issue Bar Order and Bar Order, pursuant to Business and Professions Code section 10087.

3. Respondent timely filed a Request for Hearing, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

4. The Notice of Hearing was properly served on respondent at the address listed on respondent's Request for Hearing. The First Continued Notice of Hearing was properly served on respondent at the address provided by respondent on June 3, 2009, during his telephonic motion for continuance. Despite proper service of the Notice of Hearing and First Continued Notice of Hearing, respondent did not appear and was not otherwise represented at hearing. Upon proof of compliance with Government Code sections 11505 and 11509, the matter proceeded as a default hearing pursuant to Government Code section 11520.

5. On August 31, 2009, the Administrative Law Judge (ALJ) issued an Order Reopening Record Re: Authority to Issue Bar Order. In light of the revocation of respondent's licenses and licensing rights on October 15, 2008, the ALJ requested briefing regarding complainant's authority to issue a Bar Order against an unlicensed person who had not previously been ordered to desist and refrain from engaging in the business of real estate. On September 1, 2009, complainant filed points and authorities in support of complainant's authority to issue a Bar Order pursuant to Business and Professions Code section 10087. Respondent did not submit a written brief in his behalf.

LEGAL CONCLUSIONS

Applicable Statute and Legislative Intent

1. Business and Professions Code section 10087, subdivision (a), provides that in addition to acting pursuant to the authority provided under sections 10086, 10176 and 10177, the commissioner may, after appropriate notice and opportunity for a hearing, by order, suspend, or bar from any position of employment, management, or control, for a period not

exceeding 36 months, a real estate salesperson or real estate broker, or an unlicensed person issued an order under Section 10086, if the commissioner finds either of the following:

> (1) That the suspension or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the public.
>
> (2) That the person has been convicted of or pleaded nolo contendere to any crime, or has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business in accordance with the provisions of this division.

2. The legislative intent for authorizing the commissioner to issue an Order of Debarment is to prevent real estate licensees, who have been disciplined by the department, from seeking employment with real estate-related companies that are regulated by departments other than the Department of Real Estate. (Stats.2008, c. 286 (S.B.1737), § 1.)

3. This statute applies to real estate salespersons, real estate brokers, or unlicensed persons issued an order pursuant to Business and Professions Code section 10086. Respondent is a person whose real estate salesperson license has been revoked. Even though his real estate salesperson license has been revoked, he is subject to the jurisdiction of the department by virtue of having been licensed and having rights of reinstatement, pursuant to Business and Professions Code sections 10171.3 and 10182, in conjunction with Government Code section 11522. Therefore, notwithstanding the revocation of respondent's real estate salesperson license and licensing rights on October 15, 2008, and until respondent has exercised his right to reinstatement, respondent is subject to the provisions of this statute.

Cause to Issue Bar Order

4. Respondent is subject to disbarment under Business and Professions Code section 10087, subdivision (a)(1), because he has violated the Real Estate Law by participating in fraudulent mortgage schemes and submitting false and misleading documentation to induce lenders to fund mortgage loans, as set forth in Factual Finding 1. In so doing, respondent caused material damage to the public. It is, therefore, in the public

interest to bar respondent from any position of employment, management or control in any real estate-related business.[1]

ORDER

Pursuant to Business and Professions Code section 10087, respondent David Marshall Crisp is hereby barred, for a period of 36 months, from the following:

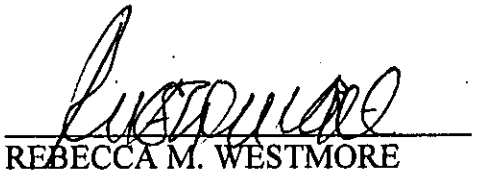
1. Holding any position of employment, management or control in a real estate business;

2. Participating in any business activity of a real estate salesperson or a real estate broker;

3. Engaging in any real estate-related business activity on the premises where a real estate salesperson or real estate broker is conducting business; and,

4. Participating in any real estate-related business activity of a finance lender, residential mortgage lender, bank, credit union, escrow company, title company, or underwritten title company.

DATED: September 25, 2009



REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings

[1] At hearing, complainant introduced evidence of civil actions pending, and default judgments entered, against respondent, subsequent to the revocation of his real estate licenses and licensing rights. This evidence was not alleged as grounds for complainant's Notice of Intent to Issue Bar Order and Bar Order, and therefore was not considered as a basis for this Proposed Decision.

DEPARTMENT OF REAL ESTATE
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789

FILED
JAN 15 2009
DEPARTMENT OF REAL ESTATE
By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of: DAVID MARSHALL CRISP, Respondent.	NO. H- 2342 FR NOTICE OF INTENTION TO ISSUE BAR ORDER; AND BAR ORDER (B&P Code § 10087)

TO: DAVID MARSHALL CRISP (hereinafter sometimes "Respondent")
9808 Fitzgerald Drive
Bakersfield, CA 93311

Pursuant to Section 10087(b) of the California Business and Professions Code (hereinafter "the Code"), you, Respondent, are hereby notified of the intention of the California Real Estate Commissioner (hereinafter "Commissioner") to issue a Bar Order pursuant to Section 10087(a) of the California Business and Professions Code.

Pursuant to the authority granted to the Commissioner by Section 10087 of the Code, and after review and consideration of:

1. The findings and Decision sustaining the allegations of the Accusation in Case No. H-2163 FR, as set forth in the Decision dated November 13, 2008,

STATE'S EXHIBIT 1

revoking Respondent's real estate license for violations of Sections 10176(a), 10176(i), 10177(d), and 10177(j).

The Commissioner finds that:

(A) A Bar Order is in the public interest;

(B) Respondent has knowingly committed violations of the Real Estate Law; and,

(C) Respondent's violations of the Real Estate Law have caused material damage to the public.

NOW, THEREFORE, IT IS ORDERED, pursuant to the authority of Section 10087 of the Code, you, DAVID MARSHALL CRISP, be, and hereby are, barred and prohibited for a period of thirty-six (36) months from the effective date of this Bar Order, from engaging in any of the following activities in the State of California:

(A) Holding any position of employment, management, or control in a real estate business;

(B) Participating in any business activity of a real estate salesperson or a real estate broker;

(C) Engaging in any real estate related business activity on the premises where a real estate salesperson or real estate broker is conducting business; and,

(D) Participating in any real estate related business activity of a finance lender, residential mortgage lender, bank credit union, escrow company, title company, or underwritten title company.

NOTICE OF RIGHT AND OPPORTUNITY FOR A HEARING

Pursuant to Section 10087 of the Code, you have the right to request a hearing under the California Administrative Procedure Act (Chapter 4.5 – commencing with Section 11400 of the Government Code). If you desire a hearing, you must submit a written request within fifteen (15) days after the mailing or service of this "Notice of Intention to Submit Bar Order; and Bar Order." The request may be in any form provided it is in writing, includes your

current return address, and indicates that you want a hearing, is signed by you or your behalf, and is delivered or mailed to the Department of Real Estate, P. O. Box 187007, Sacramento, California, 95818-7007, Attention Legal Section, or is delivered personally to the offices of the Department of Real Estate, 2201 Broadway, Sacramento, California.

If no hearing is requested within said fifteen (15) day time period, your failure to request a hearing shall constitute a waiver of the right to a hearing.

THIS BAR ORDER IS EFFECTIVE IMMEDIATELY.

It is so ordered this 15th day of January, 2009.

JEFF DAVI
Real Estate Commissioner